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Meeting: 1521st meeting (March 2025) (DH)

Communication from an NGO (Human Rights Association) (15/01/2025) in the Oner and Turk, Altug Taner Akcam, Artun and Guvener and Isikirik groups of cases v. Türkiye (Applications No. 51962/12, 27520/07, 75510/01, 41226/09).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1521^e réunion (mars 2025) (DH)

Communication d'une ONG (Human Rights Association) (15/01/2025) dans les groupes d'affaires Oner et Turk, Altug Taner Akcam, Artun et Guvener et Isikirik c. Türkiye (requêtes n° 51962/12, 27520/07, 75510/01, 41226/09) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

15 JAN. 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



RULE 9.2 COMMUNICATION

in the Öner and Türk Group of Cases (no. 51962/12); Akçam Group of Cases (no. 27520/07); Işıkırık Group of Cases (no. 41226/09) and Artun and Güvener Group of Cases (no. 75510/01) v. Turkey

Submitted by the
HUMAN RIGHTS ASSOCIATION

15 January 2025

DGI -Directorate General of Human Rights and Rule of Law

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15 January 2025

Ankara

**Submission by the Human Rights Association (İnsan Hakları Derneği) pursuant to Rule 9.2 of the
Committee of Ministers’ Rules for the Supervision of the Execution of Judgments**

**Additional Observations on the Implementation of Öner and Türk (no. 51962/12); Altuğ Taner
Akçam (no. 27520/07); Işıkırık (no. 41226/09); and Artun and GÜvener (no. 75510/01) group of cases
judgments.**

I. INTRODUCTION

1. The Human Rights Association (İnsan Hakları Derneği -“İHD”) is a non-governmental, independent, and voluntary body. The association, founded in 1986, is the oldest and largest human rights organization in Turkey and its sole and specific goal is to promote “human rights and freedoms.” İHD issues special reports on various human rights issues, including annual reports on human rights violations in Turkey. İHD also submits shadow reports before committees at the United Nations and the Council of Europe as well as submitting Rule 9.2 communications.¹

2. The aim of this submission is to present information to the Committee of Ministers about the persistent negligence of Turkish authorities to take full and effective measures concerning the execution of judgments in the *Öner and Türk* (no. 51962/12); *Akçam* (no. 27520/07); *Işıkırık* (no. 41226/09) and *Artun and GÜvener* (no. 75510/01) group of cases to prevent violations of the right to freedom of expression in Turkey.

¹ <https://www.ihd.org.tr/en>

A. Background

3. The *Öner and Türk* group concerns unjustified convictions of the applicants mainly based on Article 6 § 2 (printing of statements made by a terrorist organisations) and Article 7 § 2 (propaganda in favour of an illegal organisation) of the Anti-Terrorism Law; Article 215 (praising an offence or an offender) and Article 216 (provoking the public to hatred, hostility, denigrating a section of the public on grounds of social class, race, religion, sect, gender or regional differences) of the Criminal Code (violations of Article 10).

4. The *Altuğ Taner Akçam* group deals with prosecutions under Article 301 of the Criminal Code (publicly denigrating the Turkish nation or the organs and institutions of the state, including the judiciary and the army), which the Court found not to meet the “quality of law” requirement in view of its “unacceptably broad terms” (violations of Article 10).

5. The *Artun and Güvener* group concerns unjustified interferences with the applicants’ right to freedom of expression on account of their criminal convictions for insulting public institutions, officials and the President under Articles 125 and 299 of the Criminal Code (the President, the Republic, police officers, tax inspectors etc.) (violations of Article 10).

6. The *Işıkkırık* group concerns criminal sanctions imposed on the applicants on account of the exercise of their right to freedom of expression or assembly based on Article 220/6 (committing an offence on behalf of an organisation without being a member) and 220/7 (aiding and abetting an organisation without belonging to its structure) of the Criminal Code.

II. GENERAL MEASURES

7. *Regarding the Öner and Türk; Altuğ Taner Akçam, Işıkkırık and Artun and Güvener groups of cases, İHD submitted its Rule 9.2 notification on 24.01.2024.² In this notification, the latest developments regarding the relevant articles of law analysed in each group of cases were discussed and up-to-date statistics were presented.*

B. Öner and Türk Group of Cases

8. According to the statistics of the Ministry of Justice for 2023^a total of 41873 investigation files were handled within the scope of the Anti-Terrorism Law (ATL) No. 3713 (art. 6-7), 5377 of these investigations resulted in non-prosecution decisions, and 3963 investigation files were converted into prosecutions. According to the same statistics, in 2023, a total of 12627 court cases were heard under the Anti-Terrorism Law (Articles 6-7), of which 1022 resulted in conviction and 1552 in acquittal. As mentioned in our previous Rule 9.2 submissions, in the statistics shared by the Ministry of Justice from 2020 onwards, the data on the articles regulated under the heading of the type of offence charged are given collectively, rather than item by

² [https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD\(2024\)122E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD(2024)122E%22%5D%7D)

item. Therefore, it is not possible to access accurate data on investigations and prosecutions that lead to violations of freedom of expression.

9. The examples given below are only some of the clear examples of the structural problems arising from Article 7/2 of the Anti-Terrorism Law, contrary to what the Government claims in its action plans. A lawsuit was filed against journalist Nevşin Mengü with the demand of imprisonment from 1 year and 6 months to 7 years and 6 months on the grounds that the video she published on her social media account made ‘terrorist organisation PYD/YPG propaganda’. In the indictment prepared by Istanbul Chief Public Prosecutor's Office, it was stated that the defendant Mengü “*publicly published an interview with Salih Muslim, the leader of the PYD/YPG terrorist organisation, who is wanted with a red notice*”, on her social media account.³

10. Journalists Hüseyin Aykol and Reyhan Çapan were sentenced to 4 years, 4 months and 15 days in prison and Ayşe Batumlu Kaya was sentenced to 1 year, 21 months and 2 days in prison on charges of ‘propaganda of an illegal organisation’ in the lawsuit filed against them for their articles in Özgür Gündem newspaper, which was closed down by a Decree Law.⁴

11. A TikTok video of women dancing the halay at a wedding to a song about Kurdish guerrillas was the reason for police detaining six people in Kurtalan district of Siirt on 26 July 2024. The Siirt Governorate announced the detentions in a statement^{and} said ‘our fight against terrorist organisations will continue with determination and resolve’. Subsequently, a woman and three girls were arrested.⁵

C. Altuğ Taner Akçam Group of Cases

12. The Government stated that in previous action plans, Article 301 of the Turkish Criminal Code (TCC) had been amended to bring it in line with Convention standards, that the scope of application of this provision had been narrowed; that the opening of an investigation under Article 301 of the TCC was subject to the permission of the Ministry of Justice, which was introduced as a filtering mechanism against arbitrary and abusive use of the provision; and that the practical implementation of the permission mechanism had improved in recent years.

13. Contrary to what the Government claims, prosecutors frequently resort to Article 301 of the TCC to silence criticism of the Government and State institutions. In the Ministry of Justice's statistics for 2023, there are no separate statistics on Article 301 of the TCC and the information is given together with the statistics on Article 299 of the TCC. The information is given together with the statistics on Article 299 of the Turkish

³ <https://anlatilaninotesi.com.tr/20241225/gazeteci-nevsin-mengu-hakkinda-teror-orgutu-propagandasi-sucundan-dava-acildi-7-yil-6-aya-kadar-1092019100.html>

⁴ <https://sessizkalma.org/tr/haberler/yeniden-gorulen-ozgur-gundem-davasinda-ceza-cikti>

⁵ <https://www.hrw.org/tr/news/2024/08/15/turkiye-kurdish-songs-and-dances-are-not-terrorist-propaganda>

Criminal Code. According to these statistics, a total of 22270 investigation files were opened in 2023 within the scope of Articles 299-301 of the TCC, 7302 of these files resulted in non-prosecution, and 6646 of them turned into public cases. According to the same statistics, a total of 5678 cases were filed under Articles 299-301 of the TCC, of which 1631 resulted in conviction and 1613 in acquittal.⁶ In practice, this article is used as a tool of political pressure, in complete contravention of ECtHR jurisprudence. The Committee should insist that the Government provide up-to-date and detailed statistical data on criminal investigations and prosecutions and comment on this data.

14. The court acquitted Human Rights Association (İHD) Co-Chair Lawyer Eren Keskin and İHD Commission Against Racism and Discrimination Member Gülistan Yarkin of charges under Article 301 of the TCC on 2 May 2024 at Istanbul Courthouse 51st Criminal Court of First Instance. The prosecutor of the case made an application to the Criminal Chamber of the Regional Court of Appeal on 21 May 2024 and requested the reversal of the acquittal verdict.⁷

15. Diyarbakır Chief Public Prosecutor's Office filed a lawsuit against the executives of the bar association on charges of Article 301 of the TCC based on the statements in the press release titled 'Confrontation and Reconciliation' on the website of the Diyarbakır Bar Association on 24 April 2022, the anniversary of the Armenian Genocide. Diyarbakır 10th Assize Court acquitted the head and executives of the bar association.⁸

16. Istanbul Chief Public Prosecutor's Office filed a lawsuit against journalist Elif Bayburt for her interview with Rob Sadler from the International Solidarity Movement for Palestine (ISM) regarding human rights defender Ayşenur Ezgi Eygi, who was killed by Israel, under Article 301 of the Turkish Penal Code. Sadler's words '...the governments of Turkey and the US are complicit in Israel's genocide against the Palestinian people' were cited as the reason for the lawsuit.⁹ In the lawsuit filed against 11 members of the then Peoples' Democratic Party (HDP) Central Executive Committee for their statement titled "Face the shame of the Armenian Genocide!" on 24 April 2021, 10 people were sentenced to 5 months in prison each; the sentence was postponed.¹⁰

D. Artun and Guvener Group of Cases

17. The Government indicated in previous action plans that legislative amendments and the practice of domestic courts were in line with Convention standards. The Government argues that the authorisation of the Minister of Justice to initiate an investigation into the offence under Article 299 of the TCC is a filtering measure and that the implementation of this mechanism in practice has improved in recent years, addressing

⁶ https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADAlet_ist-2023CALISMALARI59.pdf

⁷ <https://bianet.org/haber/savci-eren-keskin-ve-gullistan-yarkinin-beraat-ettigi-301-madde-davasini-istinafa-tasidi-295649>

⁸ <https://www.mlsaturkey.com/tr/diyarbakir-barosu-yoneticileri-hakkinda-acilan-5inci-tck-301-davasi-da-beraatla-sonuclandi>

⁹ <https://bianet.org/haber/aysenur-ezgi-eygi-ve-filistin-roportajina-turkluge-hakaret-davasi-303264>

¹⁰ <https://www.mlsaturkey.com/tr/eski-hdp-myk-uyesi-10-kisiye-5er-ay-hapis-cezasi-verildi>

these concerns. It also stated that the scope of the offence of ‘insulting the President’ was narrowly interpreted and therefore in line with the criteria set out in the Court's judgments.

18. According to the statistics of the Ministry of Justice for 2020, a total of 31297 investigations were opened under Article 299 of the TCC, 9166 of which resulted in a verdict of non-prosecution, and 7790 investigations turned into public cases. Again, according to the statistics of 2020, a total of 8769 public cases were filed under Article 299 of the TCC, of which 3325 resulted in conviction and 1335 in acquittal. In the statistics of the Ministry of Justice for 2023, the statistics on Article 299 of the TCC are given together with the statistics on Article 301 of the TCC.¹¹ As a result, the implementation of Article 299 of the TCC starts with the automatic authorisation procedure of the Minister of Justice, and prosecutors decide on non-prosecution in only a very small percentage of investigation files, while the majority result in convictions and/or suspended sentences.

19. A woman named Dilruba Kayserilioğlu, who was arrested and imprisoned for 18 days due to her remarks in a street interview in İzmir, was sentenced to 11 months and 20 days in prison for ‘insulting the President’ and the announcement of the verdict was deferred. When asked about the blocking of access to Instagram, Kayserilioğlu said: *“In the heart of the 21st century, if we get up and leave the parliamentary system and give the Republic of Turkey to a single man, he will use it like his father's farm, like a stable. He openly publishes Friday messages on his Instagram. And there are even those who support this: ‘Of course he will use it, of course he will open it.’ This may be misunderstood or it may go to other places. I don't care at all.”*¹²

20. 2 people (Ş.Y. and E.T.) and 2 other people (G.E., M.Ö.) who were allegedly going to participate in the protest against trade relations with Israel during the speech of President Recep Tayyip Erdoğan at the ‘TRT World Forum’ event held at Istanbul Congress Centre on 29-30 November 2024 were gagged by the security guards and taken out of the hall and same 4 people were detained on the allegation of ‘insulting the President’. Later on the same day, 5 people (M.S.E., F.M.E., F.D.G., C.A. and C.U.) who protested for the same reason in front of Istanbul Congress Centre where the event was held, were detained for ‘insulting the President’. 9 people were arrested by the Criminal Judgeship of Peace on 2 December 2024 on the allegations of ‘opposition to Law on Meetings and Demonstrations Law No. 2911’ and ‘insulting the President’.¹³

21. A person named G.K., who was detained on 28 November 2024 in Esenyurt district of Istanbul on 13 January 2024, on the grounds of some expressions she used in a street interview, was arrested by the Criminal

¹¹ See prg.13.

¹² <https://gazeteoksijen.com/turkiye/dilruba-kayseriliogluna-cumhurbaskanina-hakaretten-hapis-cezasi-226969>

¹³ <https://tihv.org.tr/gunluk-ih-raporlari/30-kasim-2-aralik-2024-gunluk-insan-haklari-raporu/>

Court of Peace on 30 November 2024 on the charges of ‘insulting the President’ and ‘inciting people to hatred and hostility’ and was taken to Istanbul Bakırköy Women's Prison.¹⁴

22. According to the Monitoring Report published by Bianet (April, May, June 2024), at least 17 journalists and cartoonists were named in lawsuits based on the grounds of ‘insulting the President’ in the April-June period. A total of 74 years and 8 months of imprisonment was demanded in these cases. Although no verdicts of acquittal or conviction could be identified in the trials held in the three-month period in question, Article 299 of the TCC, paved the way for more than 250 journalists to be prosecuted and at least 76 of them to be sentenced to imprisonment or fines during President Erdoğan's 10-year term in office.¹⁵

23. The 2023 statistics on Article 125 of the TCC are given together with the offences regulated under Articles 125-131 of the TCC (offences against honour), therefore statistics on Article 125 of the TCC alone are not available. According to the statistics of the Ministry of Justice for the year 2023, a total of 1158457 investigations were opened in the context of Articles 125-131 of the TCC, 584995 of these resulted in a decision of non-prosecution; 322021 investigations turned into public cases. According to the same statistics, a total of 249605 public cases were filed under Articles 125-131 of the TCC, of which 56313 resulted in conviction and 56353 in acquittal.¹⁶

24. In previous action plans, it has been argued that the application of Article 125 §§ 3a of the TCC, which regulates the offence of insulting public officials, is compatible with the Convention. İHD CoChair Attorney Öztürk Türdoğan was charged with insulting a public official within the scope of Article 6 of the TCC based on the statement titled “A Compulsory Response to the Minister of Interior Süleyman Soylu’s Statements Targeting İHD” published on İHD’s website¹⁷ on 29 June 2018. An indictment was filed, and it was accepted by Ankara 60th Criminal Court of First Instance, demanding conviction for the crime of defamation under Article 125 § 3 of the TCC. The trial resulted in Mr. Türkdöğün’s acquittal as the elements of the offense impugned did not occur. However, the prosecutor’s office objected to this ruling of the court and the file is pending under appellate review.

E. Işıkırık Group of Cases

25. In its previous action plan, the Government stated that on 26 October 2023, the Constitutional Court examined Article 220/6 of the TCC and annulled Article 220/6 of the TCC on the grounds that this article was unforeseeable and therefore did not meet the qualifications of a law; this decision was published in the

¹⁴ <https://tihv.org.tr/gunluk-ih-raporlari/30-kasim-2-aralik-2024-gunluk-insan-haklari-raporu/>

¹⁵ <https://bianet.org/haber/gun-gun-uc-aylik-medya-ifade-ozgurlugu-ihlalleri-297728>

¹⁶ https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADalet_ist-2023CALISMALARI59.pdf

¹⁷ <https://www.ihd.org.tr/icisleri-bakani-suleyman-soylu-ile-ilgili-zorunlu-aciklama/>

Official Gazette of 8 December 2023 and would enter into force on 8 April 2024. However, the main problems highlighted in the Işıkırık case group remain.

26. Before the amendment, Article 220/6 of the TCC titled ‘Establishing an organisation with the aim of committing crime’ reads as follows: “A person who commits a crime on behalf of an organisation without being a member of the organisation shall also be punished for the crime of being a member of the organisation. The penalty for the offence of being a member of an organisation may be reduced by up to half. The provision of this paragraph shall only apply to armed organisations.” After the Constitutional Court's decision, with the “Law on the Amendment of the Code of Criminal Procedure and Certain Laws’ No. 7499, known as the 8th Judicial Package, published in the Official Gazette No. 32487 on 12 March 2024, the relevant article reads as follows: ‘A person who commits a crime on behalf of an organisation without being a member of the organisation shall also be sentenced to imprisonment from two years and six months to six years. Depending on the nature of the offence committed, the sentence may be reduced by up to half. The provision of this paragraph shall only apply to armed organisations.’” With the same law, Article 314 (314/3) of the TCC was amended as follows: “A person who commits a crime on behalf of an organisation without being a member of the organisation shall also be sentenced to imprisonment from five to ten years. Depending on the nature of the offence committed, the sentence may be reduced by up to half.”

27. With the amendment made after the Constitutional Court's annulment decision, while it was regulated that those who praise terrorist organisations, distribute leaflets and make statements, participate in meetings and demonstration marches cannot be sentenced under the newly added 3rd paragraph to Article 314 of the TCC, the way has been paved for an additional sentence to be imposed under Article 220/6 of the TCC. With the amendment made, while paragraph 220/6 of the TCC should have been cancelled in accordance with the cancellation decision of the Constitutional Court, only the first sentence of the paragraph was amended instead. The phrase ‘shall also be sentenced for the offence of being a member of an organisation’ in the first paragraph has been changed to ‘shall also be sentenced to imprisonment from two years and six months to six years’. This amendment is not a penal clause that is in line with the assessments of the ECtHR and the Committee of Ministers of the Council of Europe in the Işıkırık Group. Moreover, the amendment does not meet all the criticisms levelled against the law. According to this amendment, a person who is not a member of an illegal armed organisation but commits a crime on behalf of the organisation will be sentenced to imprisonment from two years and six months to six years. Depending on the nature of the offence committed, the sentence may be reduced by up to half. This provision will only apply to armed organisations. The mere reorganisation of the penalty does not meet the requirements of the ECtHR and the Constitutional Court judgements, nor is there any mechanism to prevent arbitrary behaviour by public authorities.

28. The Constitutional Court, with its decision dated 5 November 2024 and numbered 2024/189, published on 9 January 2025, annulled for the second time the regulation on ‘committing a crime on behalf of an organisation without being a member of the organisation’ regulated under Articles 220/6 and 314/3 of the

TCC. The Constitutional Court stated that the regulation mentioned in paragraph 26 of this communication is the same as the cancelled former regulation and stated that ‘...It is undoubted that the legislative body has not made a regulation by considering the constitutional guarantees regarding fundamental rights and freedoms in the light of the findings in the aforementioned cancellation decision of the Constitutional Court, therefore, the rules will have the same consequences as the cancelled provision. In this context, it has been concluded that the phrase ‘crime committed on behalf of the organisation’ in the rules is vague and the rules does not meet the requirement of legality...’. The decision will enter into force 6 months later (9 July 2025).¹⁸

29. The Constitutional Court's judgments, together with the lengthy time taken to implement them, lead to the conclusion that there is a very serious violation of the right to legal certainty in the implementation of anti-terrorism legislation in Turkey. The problems we noted in our previous Rule 9.2 submission in relation to this group of cases remain.

IV. CONCLUSION AND RECOMMENDATIONS

30. General measures to prevent violations of freedom of expression and effective investigations into cases have so far been insufficient.

31. No significant changes have been introduced to the relevant provisions since the last meeting of the Committee of Ministers at which the current group of cases was reviewed. The amendments previously introduced have not produced the results proposed by the government. İHD is of the view that the structural problems observed by the ECtHR and the Committee of Ministers persist and have not been properly addressed by the Turkish authorities.

32. The latest amendments to the Turkish Criminal Code and the Anti-Terror Law do not meet the Committee of Ministers’ requirement of full harmonization with the ECtHR’s case law in terms of the standards of foreseeability and necessity in a democratic society. Given the systemic nature of the problems analysed in this group, the length of time groups have been waiting for implementation, and the government's tactics of circumventing or delaying the implementation of decisions, the political will to address implementation for this group is lacking.

33. Having in mind the arguments above, İHD requests the Committee of Ministers to set out the following recommendations to the Turkish authorities:

- The Anti-Terror Law must absolutely be abolished and Articles 125, 215, 216, 220 §7, 299, 301 and 314 § 2 and 3 of the Turkish Criminal Code, which penalize freedom of expression, be amended.

¹⁸ <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2024/189>

- Detailed data on the implementation of the relevant provisions of the Turkish Penal Code and the Anti-Terror Law, including information on investigations, prosecutions and convictions, must be annually published.¹⁹ Examples where individuals have been convicted under Articles 6 and 7 of the Anti-Terror Law and Articles 125, 215, 216, 220§7 and 8, 299, 301 and 314 § 2 and 3 of the Turkish Penal Code must be provided.

34. İHD calls on the Committee of Ministers to instruct the Secretariat to draft an interim decision if no tangible progress is made or detailed statistics are not provided by the next review.

35. Finally, the *Öner and Türk; Akçam; Işıkırık* and *Artun and Guvener* group of cases must remain supervised under the enhanced procedure and, given the close link between freedom of expression and the press as pillars of a democratic society, the Committee of Ministers must review the *Öner and Türk; Altuğ Taner Akçam; Işıkırık* and *Artun and Guvener* group of cases at frequent and regular intervals in relation to general legislative measures.

¹⁹ As the government arbitrarily changes the methodology for collecting data with each action plan, it is impossible to determine the actual impact of the measures. It should also be noted that since 2017 the Ministry of Justice has stopped publishing detailed statistics on freedom of expression-related offences included in this submission in its judicial statistics. It is, therefore, recommended that the Committee of Ministers must request regular updates and detailed data on judicial practice regarding investigations, prosecutions and convictions related to freedom of expression.